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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
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14 JOSHUA WARD, and FONDA WARD,

NO. CIV. S-04-0678 FCD PAN

15 Plaintiffs,

16 MEMORANDUM AND ORDER

17 v.

18 CALIFORNIA DEPARTMENT OF
19 TRANSPORTATION/CALTRANS;
20 CALIFORNIA AMTRAK; STATE OF
21 CALIFORNIA; JACOB KEATING;
22 COUNTY OF SACRAMENTO; COUNTY
23 OF YOLO; CITY OF WEST
24 SACRAMENTO; UNION PACIFIC
25 RAILROAD, a business
26 organization of unknown
27 status; and DOES 1-50,
28 inclusive,

Defendants.

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26 This matter is before the court on motion by plaintiffs
27 Joshua Ward and Fonda Ward for reconsideration of the court's
28 July 22, 2005 order granting summary judgment of plaintiffs'

1 negligence claim against the National Railroad Passenger
2 Corporation¹ ("AMTRAK").^{2, 3}

3 Federal Rule of Civil Procedure 59(e) provides that a motion
4 to alter or amend a judgment shall be filed no later than 20 days
5 after entry of judgment.⁴ Fed. R. Civ. P. 59(e). Amendment or
6 alteration is appropriate under Rule 59(e) if the court (1) is
7 presented with newly discovered evidence; (2) committed clear
8 error or the initial decision was manifestly unjust, or (3) if
9 there has been an intervening change in the controlling law. See
10 Zimmerman v. City of Oakland, 255 F.3d 734, 740 (9th Cir. 2001).

11 In the July 22, 2005 Memorandum and Order, the court
12 concluded that plaintiffs' claim for "Negligent Train Operation"

14 ¹ This defendant was erroneously sued as "California
15 Amtrak."

16 ² Because oral argument will not be of material
17 assistance, the court orders the matter submitted on the briefs.
E.D. Cal. Local Rule 78-230.

18 ³ The factual background of this case is described in
19 detail in the court's July 22, 2005 Memorandum and Order.

20 ⁴ Although the court's grant of summary judgment resolved
all claims against defendant Amtrak, it was not an appealable
21 final order. Fed. R. Civ. P. 54(a) ("Judgment' as used in these
rules, includes any decrees or order from which an appeal lies.")
22 Thus, Rule 59(e) technically does not apply. Fed. R. Civ. P.
59(e) ("Motion to Alter or Amend Judgment. Any motion to alter or
23 amend a judgment shall be filed no later than 10 days after entry
of the judgment.") However, the court has inherent discretion
24 alter or amend interlocutory order at any time before entry of
final judgment. Fed. R. Civ. P. 54(b) ("... any order or other
25 form of decision, however designated, which adjudicates fewer
than all the claims or the rights and liabilities of fewer than
26 all the parties shall not terminate the action as to any of the
claims or parties, and the order or other form of decision is
27 subject to revision at any time before the entry of judgment
adjudicating all the claims and the rights and liabilities of all
28 the parties."); United States v. Martin, 226 F.3d 1042, 1048-49.
(9th Cir. 2000), cert denied, 121 S. Ct. 1671 (2001).

1 articulated only an excessive speed claim and that such claims
2 are preempted by the Federal Rail Safety Act of 1970 ("FRSA"), 49
3 U.S.C. § 20101, et seq.⁵ Plaintiffs contend that the court
4 should reconsider its ruling because the language of the
5 complaint can be construed broadly to state a claim of negligence
6 based on conduct separate and independent from the speed of the
7 train, such as failure of the train conductor to look for the
8 presence of pedestrians on the bridge despite his knowledge that
9 pedestrians frequently crossed the bridge and failure to stop the
10 train once he realized that there was a pedestrian on the bridge
11 who was not aware that a train was approaching him from behind.
12 (See Pls.' Mem. Supp. Reconsideration at 3.)

13 After reviewing plaintiffs' complaint as well as the
14 memoranda filed by the parties, the court concludes that
15 reconsideration is warranted. While inartfully drafted,
16 plaintiffs' complaint can be construed liberally to state a
17 negligence claim based on conduct other than excessive speed,
18 which would not be preempted by the FRSA. On summary judgment,
19 the court is required to give the benefit of all favorable
20 inferences to the non-moving party. United States v. Diebold,
21 Inc., 369 U.S. 654, 655 (1962). Here, the language of the
22 complaint and plaintiffs' evidence support a claim of negligence
23 independent of the excessive speed claim. (See e.g., Dec. of
24 Michael Wikman filed April 26, 2005 [concluding that Keating was
25 inattentive as he approached the bridge and that he actually
26 accelerated as he approached Mr. Ward].) Accordingly the court
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28 ⁵ Formerly codified at 45 U.S.C. § 434, et seq.

1 grants plaintiffs' motion for reconsideration and modifies its
2 July 22, 2005 order as follows:

3 1. Defendants' motion for summary judgment of Claim One
4 against Amtrak is GRANTED.

5 2. Defendants' motion for summary judgment of Claim Two
6 against Amtrak is GRANTED to the extent plaintiffs' negligence
7 claim is based on the train's excessive speed but DENIED in all
8 other respects.

9 3. Defendants' motion for summary judgment of Claim Three
10 against Amtrak is GRANTED in part and DENIED in part. The motion
11 is granted only as to allegations of excessive speed.

12 4. Defendants' motion for summary judgment of Claims Four
13 and Five against Union Pacific is DENIED.

14 IT IS SO ORDERED.

15 DATED: August 25, 2005

16 /s/ Frank C. Damrell Jr.
17 FRANK C. DAMRELL, Jr.
18 UNITED STATES DISTRICT JUDGE
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